

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WHOLESALE INFORMATION  
NETWORK, INC.,

Plaintiff,

v.

CASH FLOW MANAGEMENT, INC.,

Defendant.

Case No. C07-5225RBL

ORDER

THIS MATTER comes before this Court upon Defendant's Petition for Costs and Attorney's Fees [Dkt. #29]. The Court has considered the motion and opposition thereto together with the entirety of the records and files herein. For the reasons stated, the Court hereby **DENIES** defendant's petition for costs and attorney's fees.

BACKGROUND

This is the second case to arise out of what began as a dispute between Wholesale Information Network, Inc. (Wholesale) and Alternative Insights (Insights). Briefly, the operative facts are as follows. Wholesale engaged Insights to perform a set of services. Insights then invoiced Wholesale for services and fees, but Wholesale contends that Insights failed to perform and declined to pay \$20,741. Some time later, in May 2006, Wholesale's attorney contacted Insights' attorney to request documents. This contact may have put Insights on notice that Wholesale was represented by counsel. In July 2006, Insights engaged Clash Flow Management, Inc. (Cash Flow), a debt collector, to collect the disputed amount from

1 Wholesale. On August 1, 2006, Cash Flow telephoned Wholesale (the Phone Call) in an attempt to collect  
2 the debt. A week later, Wholesale's attorney directed Cash Flow to communicate only with him.

3 In December 2006, Insights sued Wholesale in the District Court of Clark County, Washington,  
4 Case No. 306295-6, to collect the unpaid debt. In its answer, Wholesale cross-claimed against Cash Flow  
5 as a "Third Party Defendant," alleging that by making the phone call, Cash Flow violated the provisions of  
6 Washington's statute on debt collection practices, RCW 19.16.250, and the Federal Fair Debt Collection  
7 Act, 15 U.S.C. § 1692, *et seq.* The two statutes vary in the details, but both statutes generally prohibit  
8 improper contact with a debtor who is known to be represented by counsel.

9 Wholesale's cross-claim against Cash Flow for improper debt collection practices appears to have  
10 had at least two purposes. Wholesale not only sought damages from Cash Flow, but Wholesale also sought  
11 to use Cash Flow's allegedly improper debt collection practices under RCW 19.16.250 to invoke RCW  
12 19.16.450, which would bar Insights (as Cash Flow's customer) from collecting any interest, attorneys'  
13 fees, collection costs, or any other fees from Wholesale.

14 The Clark County District Court Judge, however, found that Cash Flow was not properly named as  
15 a third party defendant, and Wholesale dismissed the cross-claim. Wholesale then filed a new action  
16 asserting both state and federal improper debt collection claims against Cash Flow in the District Court of  
17 Clark County, Washington, Case No. 308700-6, and moved to consolidate the two Clark County suits.  
18 Cash Flow, however, removed Wholesale's Clark County case to this court, [Dkt. #1], and Wholesale  
19 moved the court to decline to exercise supplemental jurisdiction over the state law claims and remand them  
20 to the Clark County District Court, [Dkt. #13]. This Court granted the motion and remanded the state law  
21 claims to Clark County and retained jurisdiction over the federal claim. [Dkt. #20]. As part of the Court's  
22 reasoning for granting the motion, the Court stated: "because the FFDCA does not apply to commercial  
23 debts, it is not clear that Wholesale has stated a valid FFDCA claim against Cash Flow. Therefore,  
24 adjudicating Wholesale's state law claims and defenses will likely consume far more resources than  
25 adjudicating the FFDCA claim." [*Id.*]

26 Shortly after the filing of this Order, defendant moved for summary judgment, [Dkt. #21], arguing  
27 that because Cash Flow was not collecting a consumer debt, the provisions of the FFDCA at issue did not  
28 apply. On the date due for plaintiff's response in opposition to the motion, Wholesale filed a Notice of

1 Voluntary Dismissal of their claims against Cash Flow. [Dkt. #25]. Thereafter, because plaintiff did not  
2 respond in opposition to the motion and improperly attempted to voluntarily dismiss their claims in  
3 violation of Fed. R. Civ. P. 41(a), this Court entered an Order granting defendant's motion for summary  
4 judgment. [Dkt. #26].

5 This petition for costs and attorney's fees followed.

6 DISCUSSION

7 The FFDCA contains a fee-shifting provision:

8 On a finding by the court that an action under this section was brought in  
9 bad faith and for the purpose of harassment, the court may award to the  
10 defendant attorney's fees reasonable in relation to the work expended and  
11 costs.

12 15 U.S.C. §1692k(a)(3). The award of attorney's fees under this section is discretionary. *Swanson v.*  
13 *Southern Oregon Credit Service, Inc.*, 869 P.2d 1222, 1229 (9<sup>th</sup> Cir. 1988) ("We review the ultimate grant  
14 or denial [of attorney's fees] for an abuse of discretion.") Here, defendant's primary argument that they  
15 should be awarded fees and costs is that plaintiff persisted in maintaining the action even after this Court's  
16 Order on remand pointing out the weakness in plaintiff's FFDCA claim [see Dkt. #20], and forced Cash  
17 Flow to file a motion for summary judgment. According to the defendant, the fact that Wholesale  
18 dismissed the claim rather than respond in opposition to the motion is evidence of Wholesale's bad faith  
19 and evidence of Wholesale's intent to harass Cash Flow.

20 The Court disagrees. Wholesale's counsel indicates that in preparing plaintiff's opposition to the  
21 motion for summary judgment he was attempting to craft an argument that case law interpreting "debt"  
22 under the FFDCA should be re-examined, but "after careful consideration" the effort was abandoned and  
23 the claim withdrawn. [Dkt. #31, p. 3]. Therefore, plaintiff's attempts to effect a change in the law cannot  
24 be construed as being done in bad faith and with the intent to harass. Defendant's Petition for Costs and  
25 Attorney's Fees [Dkt. #29] is **DENIED**.

26 **IT IS SO ORDERED.**

27 DATED this 3<sup>rd</sup> day of October, 2007.

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RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE